

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1687.01  
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes  
DATE OF COMPLAINT: February 12, 2001  
DATE OF REPORT: March 9, 2001  
REQUEST FOR RECONSIDERATION: no  
DATE OF CLOSURE: April 24, 2001

COMPLAINT ISSUES:

Whether the MSD of Perry Township and the RISE Special Services violated:

511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's *individualized education program* (the "IEP") as written, specifically,

- a. failing to implement the identified adaptations of the "Picture Schedule," the "Visual Timer," and adjusted expectations for fine motor tasks;
- b. failing to implement the "1,2, 3 Magic" technique for behavioral problems;
- c. failing to provide 30 minutes of daily direct services from the teacher of record; and
- d. failing to provide speech and language progress reports every nine weeks.

*The Complainant reported during a conversation on February 20, 2001, that she had mistakenly identified letter d.- failing to provide speech and language progress reports every nine weeks as an issue, and requested that it not be included in the investigation.*

511 IAC 7-27-7(b) and 511 IAC 7-17-72 with regard to the school's alleged failure to ensure the student's teacher of record regularly monitored the implementation of the student's *IEP* and provided progress reports to the parents.

511 IAC 7-27-5(c) with regard to the school's alleged failure to provide the parent with a written report of the case conference committee (the "CCC") meeting and the student's *IEP* within 10 business days of the October 25, 2000, and the January 11, 2001, CCC meetings.

511 IAC 7-27-4(a)(3) with regard to the school's alleged failure to convene the CCC meeting at the parent's request.

511 IAC 7-27-6(a)(7)(B) with regard to the school's alleged failure to include in the student's *IEP* how the student's progress toward annual goals, including benchmarks or short term objectives will be measured, and how the student's parents will be regularly informed of the progress toward the annual goals.

FINDINGS OF FACT:

1. The student (the "Student") is six years old and is in kindergarten at the School. The Student is eligible for special education and related services as a student with autism.
2. The annual case review (the "ACR") was held on March 27, 2000, and the case conference committee (the "CCC") wrote the Student's *IEP* for the remainder of the 1999-2000 school year in

the early childhood program and for the 2000-01 school year in the kindergarten program. The initiation and duration of services dates are March 27, 2000, to February 28, 2001.

3. Although each annual goal sheet in the *IEP* contains a list entitled "Progress Evaluated By:" that includes options to check, such as "quizzes and tests; daily work; and observation," to indicate how progress will be measured, the *IEP* does not indicate how and when the Student's parents will be regularly informed of the progress.
4. The Adaptations and Modifications checked on the *IEP* include the following.
  - use visuals;
  - picture symbols, visual schedule, and visual timer for augmentative communication techniques;
  - curriculum adaptations for fine motor tasks; and
  - 1, 2, 3 Magic discipline technique.
5. The Supports and Accommodations portion of the *IEP* include the following program modifications and accommodations for the Student in general education.
  - use of visuals (picture, timer...);
  - more time to complete projects; and
  - visual timer as needed.
6. The *IEP* states that the Student will receive thirty minutes of inclusion kindergarten services on a daily basis.
7. In a letter dated August 2, 2000, and received the same day by the Director, the Complainant requested a CCC meeting to discuss the Student's recent diagnosis of PDD by the Student's private physician. The Director reported that the Autism Coordinator left a phone message for the Complainant on August 7, 2000, stating that a copy of the evaluation would be needed prior to the CCC meeting.
8. The Complainant responded to the August 7, 2000, phone message in a letter dated August 16, 2000. The letter was accompanied by a letter dated August 14, 2000, from the Student's private physician, and a private communication assessment dated May 11, 2000.
9. The Director reported that the first day of school for teachers and students was August 16 and August 17, 2000, respectively. A CCC notification was sent to the Complainant on August 22, 2000.
10. The CCC met on August 24, 2000, for the purpose of possibly changing the Student's exceptionality from a student with a learning disability to a student with autism. The CCC discussed the outside information sent with the Complainant's August 16, 2000 letter (Finding of Fact #8). However, the Director reported that the Complainant stated at the meeting that she had not received the report from the July 18, 2000, evaluation with the PDD diagnosis; therefore, the Student's exceptionality was not changed. An addendum (the "*August Addendum*") to the March 27, 2000, *IEP* was written. The *August Addendum* indicates that the goals written at the March 27, 2000 ACR were discussed, and that the Kindergarten Teacher reported that the Student had been following directions as well as his classmates without using the pictures. The *August Addendum* states, "A reconvene conference will be arranged after complete report is received from [local children's hospital]." The following was also written into the *August Addendum*.

"Visuals will be used if and when they are necessary."

No changes were made or included in the *August Addendum* regarding the visual timer, the adjusted expectations for fine motor tasks or the other issues of this complaint.

11. In an e-mail dated September 19, 2000, to the coordinator of autism spectrum services, the Complainant wrote the following. "We finally received the report from [private physician]...As for re-scheduling the Committee--this week is probably pushing it for everyone and I am not available Thursday or Friday...could we try to schedule for sometime the first week of October?"
12. On September 19, 2000, the Special Education Assistant called the Complainant to schedule the CCC for October 2, 2000. The CCC notice was mailed that same day.
13. On September 21, 2000, the Complainant e-mailed the Autism Coordinator stating that the Complainant needed to reschedule the October 2, 2000 CCC. The Complainant further wrote, "Please let us know when you have another date lined up."
14. On September 25, 2000, the Complainant e-mailed the Autism Coordinator saying "It really looks like next week is a complete bust for meeting...Any morning October 9-13 should be o.k." The Autism Coordinator e-mailed a response that either she or the Special Education Assistant would get back to the Complainant.
15. In an e-mail dated September 28, 2000, the Complainant suggested to the Autism Coordinator the dates of October 12, 13, 17, 18, or 19, 2000, as workable for her to schedule the CCC meeting. The Autism Coordinator e-mailed a response to the Complainant saying "We are looking at the 17<sup>th</sup> in the morning. Other dates would not work for various reasons."
16. On September 29, 2000, the Complainant e-mailed the Autism Coordinator and stated "I promised we could meet on any of those days, and WE can; however, our advocate cannot meet on the 17<sup>th</sup>. Before anyone sends out the notice, let me double-check with the schedule and I will get back with you ASAP...If the 17<sup>th</sup> is NOT going to work, the following week on October 25<sup>th</sup> is the only day we could make it...I will call as soon as I have an answer."
17. In another e-mail message dated September 29, 2000, to the Autism Coordinator, the Complainant requested that the same visual schedule used in the early childhood program be used in the kindergarten classroom.
18. In an e-mail message dated October 3, 2000, to the Autism Coordinator, the Complainant stated, "[Kindergarten Teacher] has had the picture schedule since before school started."
19. In a letter dated October 5, 2000, to the Complainant, the Kindergarten Teacher enclosed a copy of a "sticker chart" to be used to address the Student's behavior. The Kindergarten Teacher stated that she was going to begin using the sticker chart on the following day when tasks were completed, and that she was also going to "begin putting his pictures from [early childhood teacher] on his table daily so that he may refer to them."
20. The Director reported that the Autism Consultant observed the classroom on October 9, 2000, and the Kindergarten Teacher had a visual 3-step instruction process attached to the Student's desk to direct the Student while doing seat work. The Student was cooperative at group time and followed the instructions. The Director further reported, however, that during the Autism Consultant's observation the Student became agitated when asked to complete a worksheet that required writing and fine motor skills. The Autism Consultant suggested that the Kindergarten Teacher make adaptations to the task by gluing a pre-made printed response on the worksheet instead of requiring the writing to be done by the Student. Another adaptation made was dotting letters for the Student to trace when doing handwriting tasks.
21. The CCC met on October 25, 2000, and the Student's exceptionality was changed to autism. An addendum (the "October Addendum") was written and includes the following statement from the

Kindergarten Teacher regarding the Student. "...is able to follow the routine at school-cues from peers." The following items were included in the *October Addendum*.

"Have adjusted expectations with paper-pencil activities.

-dotting letters

-using pre-made letters instead of writing them when not a writing task

-darken writing lines/broaden"

"Visual cues helpful instead of always verbally repeating directions."

"Responding well to sticker chart."

Although the *October Addendum* states, "He has not had difficulties with transitions," the Director reported that due to the Complainant's concern with such, a specific goal was written in the *October Addendum*. That goal states, "[Student] will use a visual schedule to transition from one activity to the next 70% of the time." No further changes were made or included in the *October Addendum* regarding the other issues of this complaint.

22. The Director reported that during the week of October 30, 2000, the Autism Consultant met with the teacher of record (the "TOR") and stressed the absolute need for the TOR to work with the Student everyday in the class, and also the need for fine motor modifications and how to make those modifications. Sometime in November the Autism Consultant again stressed to the TOR as well as the Kindergarten Teacher the Student's need for fine motor modifications to be done consistently. The Director further reported that both the Kindergarten Teacher and the TOR never refused to do modifications, but did not do them all the time.
23. The CCC met on December 4, 2000, and wrote a supplement to the *IEP* (the "*Supplement*") to correct the *October Addendum*. The following items were written into the *Supplement*.
  - "Provide visual backups like objects, written form, pictures."
  - "Environmental and visual adaptations to aid organization."
  - "Visual supports for organization and sequencing."
  - "Presented visually-pictured and written when needed."
  - "modify difficulty, shorten, allow extra time."
  - "Individualized visual schedule."No further changes were made or included in the Supplement regarding the other issues of this complaint.
24. On or about December 4, 2000, the Autism Consultant designed a more portable and individual visual schedule for the Student. The Director reported that later that week, the Complainant was at the School and stated to both the Kindergarten Teacher and the Autism Consultant that she did not agree with the way the visual schedule had been made.
25. The Director reported that in December the Autism Consultant again emphasized the importance of the Student's modifications. The Autism Consultant suggested that teachers give the Student advance information on what fine motor tasks would be included that day and also suggested that shortening the amount required of tasks required of the Student.
26. In an e-mail message dated December 11, 2000, to the Autism Consultant, the Complainant wrote the following. "[Student] needs to have the picture schedule used consistently, on a daily basis,...For the ABSOLUTE LAST time—we are hereby DEMANDING that PROPER picture schedule be put into place for [Student] IMMEDIATELY...The picture schedule will be used properly beginning IMMEDIATELY."
27. In a letter dated December 14, 2000, to School representatives, the Complainant wrote the following. "...with the hope that a picture schedule similar to the type used at home and for the past 2 ½ years would be in place...As you know, the "picture schedule" has gone thru some changes, revisions, and a few different formats." The Complainant also wrote, "We think it is now time to use

the picture schedule as we have been instructed by various other Educational Professionals, Behavioralists, and Therapists with whom we consult...We ask that this picture schedule format be adopted immediately and that reasonable time be allowed for it to become a positive reinforcer..."

28. On December 19, 2000, the Kindergarten Teacher reported to the Autism Coordinator. "The visual schedule is hanging on my desk and he has used it once that I have noticed (on his own). We have taken it to him and brought him to it several times."
29. The CCC met on January 11, 2001, and an addendum was written (the "*January Addendum*"), and includes the following statement from the Kindergarten Teacher with respect to the visual schedule. "...may refer to his schedule, but normally watches other students and is able to go from activity to activity." The Kindergarten Teacher also reported that she "feels like he knows the routine, makes comments about what is next and does not rely on it, although it is there if needed." The CCC decided to add the following to the *January Addendum*. "He will be pulled out for 30 mins per day to work on fine-motor skills in a one-to-one situation." The *January Addendum* states that the behavior chart "will be sent home and consequences will be implemented at home." Also included is "...pictures of consequences will be added to bottom of the chart." No changes were made regarding the use of the visual schedule, and the goals written at the March 27, 2000, CCC meeting remained the same.
30. Also on January 11, 2001, the Complainant offered to assist the teachers by doing the "dotting" of letters for worksheets at home in advance. Both the teacher of record (the "TOR") and the Kindergarten Teacher declined the offer.
31. A new daily behavior chart was designed on January 11, 2001. Some of the behaviors that are included in the visual schedule and are then charted include walking in line; working at table with peers; and sitting with group. The behavior chart also includes "followed visual schedule" as an item. The Director reported that the chart indicates that from January 16, 2001, to February 16, 2001, the Student did the following: walked in line correctly 18 of 20 possible times; worked at table with peers on 11 of 20 days; sat with group 17 of 20 days; and followed the visual schedule 8 of 20 days.
32. In an e-mail dated January 23, 2001, the Complainant informed the Autism Consultant that several papers brought home by the Student did not have the adaptations as discussed.
33. On January 28, 2001, the Autism Consultant observed the Student in class not cooperating and following the visual schedule. The Student calmed down once his work was modified and computer time was arranged as a reward. The Autism Consultant made master copies of the dotted letters for every letter being covered in the classroom. The Autism Consultant again stressed the need for and success of making modifications for fine motor work. The classroom assistant was shown how to make the worksheet modifications, and the TOR was instructed to finish the letters.
34. On January 31, 2001, the Special Education Assistant talked with the TOR about the need for her to have the dotted letters prepared in advance for the Student, and also how to provide hand-over-hand support when the Student was struggling.
35. The Director reported that on February 2, 2001, the Complainant brought the visual schedule used at home to the School so that the one used in the classroom could be changed to more closely resemble the visual schedule used at home. On February 20, 2001, the Complainant e-mailed the Autism Coordinator that she had created a visual schedule for use in the classroom based upon pictures obtained from the Student's private doctor. The Complainant also asked that any other additional pictures be omitted. On this same day the Complainant delivered the visual schedule to the School that she wants the Student to use at School.

36. No mention of 30 minutes of direct services from the TOR is included in any of the CCC documents.
37. The Director acknowledged that neither the TOR or the Kindergarten Teacher used the visual timer with the Student until December 4, 2000.
38. The Director acknowledged that the 1,2, 3 Magic technique was not implemented by the TOR or the Kindergarten Teacher.
39. The Director reported that the TOR did not provide the Complainant with a progress report at the first nine-week grading period. However, the TOR belatedly sent the Complainant a progress report of the first nine-week grading period, and subsequently at the second nine-week grading period.
40. The Director reported that the Complainant received a copy of the written report and addendum to the *IEP* from the October 25, 2000, CCC on November 18, 2000. A copy of the written report and *IEP* addendum from the January 11, 2001, CCC were sent in an envelope from the School with a post date of January 27, 2001.

#### CONCLUSIONS:

- 1.a. Findings of Fact #4 and #5 indicate that the *IEP* in place for the Student at the beginning of the 2000-01 school year included the use of a picture schedule, a visual timer, and adjusted expectations for fine motor tasks.

Finding of Fact # 10 indicates that only five instructional days passed before the CCC met on August 24, 2000, and amended the *IEP* to read "Visuals will be used if and when they are necessary." Findings of Fact #17, #18, #19, #20, #21 indicate that the Complainant was not in agreement with the picture schedule being used with Student in the classroom. Finding of Fact #21 indicates that on October 25, 2000, the CCC met again and amended the *IEP* to include a goal that stated the Student would "use a visual schedule to transition from one activity to the next 70% of the time." Although Finding of Fact #21 indicates that the Student was not having difficulty with regard to transitions, Finding of Fact #23 indicates that the CCC met on December 4, 2000, and amended the *IEP* to specify the use of an individual visual schedule; however, the *IEP* did not specify what type of visual schedule would be used. Finding of Fact #24 indicates that the Autism Consultant designed a more portable and individual visual schedule for the Student; however, Findings of Fact #25, #26, #27, and #28 indicate that the Complainant was again in disagreement with the type of visual schedule being used in classroom. Finding of Fact #29 indicates that the CCC met and discussed that the Student's use of the visual schedule and revised the use of the current visual schedule. Finding of Fact #31 indicates that the Student was using the visual schedule that was in place for him. **No violation of 511 IAC 7-27-7(a) occurred with regard to the School's failure to implement the picture schedule.**

Findings of Fact #10, #21, and #29 indicate that no changes were made to the Student's *IEP* at subsequent CCC meetings regarding the use of the visual timer. However, Finding of Fact #37 indicates that the visual timer was not implemented in the Student's classroom. **A violation of 511 IAC 7-27-7(a) occurred with regard to the School's failure to implement the visual timer.**

Findings of Fact #21 and #23 indicate that the CCC made changes to the Student's *IEP* with regard to adjusting expectations for fine motor tasks. Finding of Fact #22 indicates that the Autism Consultant stressed to the TOR the need for the Student's fine motor

modifications. Finding of Fact #22 also indicates that the TOR and the Kindergarten Teacher never refused to do the modifications, they just did not do them all the time. Finding of Fact #25 indicates that on several occasions the Autism Consultant had to discuss with the TOR and the Kindergarten Teacher the importance and the need to implement the Student's fine motor task modifications. Finding of Fact #29 indicates that the CCC again revised the Student's *IEP* with respect to fine motor tasks. However, Findings of Fact #30, #32, #33, and #34 indicate that the Student's classroom work did not reflect fine motor task modifications, and that the Autism Consultant and the Special Education Assistant continued to have to discuss the need to provide fine motor modifications. **A violation of 511 IAC 7-27-7(a) occurred with regard to the School's failure to implement adjusted expectations for fine motor tasks.**

- 1.b. Findings of Fact #4 and #5 indicate that the Student's *IEP* in place at the beginning of the 2000-01 school year included using the "1, 2, 3 Magic" behavior technique. Findings of Fact #10, #21, and #29 indicate that no changes were made to the Student's *IEP* at subsequent CCC meetings regarding the use of the "1, 2, 3 Magic" behavior technique. However, Finding of Fact #38 indicates that the "1, 2, 3, Magic" behavior technique was not implemented in the Student's classroom. **A violation of 511 IAC 7-27-7(a) occurred with regard to the school's failure to implement the "1, 2, 3 Magic" behavior technique.**
- 1.c. Findings of Fact #6 and #36 indicate that the none of the CCC documents indicate that the Student was to have received 30 minutes of daily direct services from the TOR. **No violation of 511 IAC 7-27-7(a) occurred with respect to the School's failure to provide 30 minutes of daily direct services from the TOR.**
2. Findings of Fact #3, #20, #22, #25, #30, #32, #33, #34, #37, #38, and #39 indicate that the TOR did not fulfill her responsibilities by regularly monitoring the implementation of the Student's *IEP* and providing progress reports to the Complainant. **A violation of 511 IAC 7-27-7(b) and 511 IAC 7-17-72 occurred.**
3. Finding of Fact #40 indicates that the Complainant was not provided a written copy of the report of the CCC meetings and *IEPs* within 10 business days of the October 25, 2000, and the January 11, 2001 CCC meetings. **A violation of 511 IAC 7-27-5(c) occurred.**
4. Findings of Fact #7, #8, #9, and #10 indicate that the Complainant's request to convene a CCC meeting at the beginning of the 2000-01 school year was complied with in a timely manner; however, because not all of the necessary diagnostic information was available for the CCC to review, it was agreed that the CCC would reconvene after a complete report was received. Findings of Fact #11, #12, #13, #14, #15, #16, and #21 indicate that CCC was unable to reconvene in a timely manner due to the Complainant's repeated changes in schedule. **No violation of 511 IAC 7-27-4(a)(3) occurred.**
5. Findings of Fact #3 and #39 indicate that the Complainant was not provided progress reports, nor was the *IEP* completed to indicate how and when the Student's progress would be provided to the Complainant. **A violation of 511 IAC 7-27-6(a)(7)(B) occurred.**

**The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The MSD of Perry Township and the RISE Special Services shall:

1. convene the Student's CCC meeting for the purpose of discussing compensatory services with respect to the provision of the visual timer, adjusted expectations for fine motor tasks, and utilizing the "1, 2, 3 Magic" behavior technique. Further, the CCC shall determine how and when the Complainant will receive information regarding the Student's progress. A copy of the *CCC Report* and *IEP* shall include a discussion of compensatory services. If the CCC determines the need for compensatory services, the *IEP* shall include how and when said services shall be provided to the Student. Further, the *IEP* shall include how and when the Complainant will be informed of the Student's progress. A copy of the *CCC Report* and *IEP* shall be submitted to the Division no later than April 13, 2001.
2. conduct an inservice training with all teachers who serve as a TOR for students regarding the responsibilities of the TOR. A copy of the inservice training agenda, inservice materials, and a sign-in sheet of all attendees, by name and title, shall be submitted to the Division no later than April 13, 2001.
3. conduct an inservice training with all professional personnel at the School regarding the requirement to provide a written copy of the *CCC Report* and *IEP* within 10 business days of the meeting. A copy of the inservice training agenda, inservice materials, and a sign-in sheet of all attendees, by name and title, shall be submitted to the Division no later than April 13, 2001.
4. conduct an inservice training with all professional personnel at the School regarding the requirement to include in student IEPs how and when a student's progress will be provided to the parent. A copy of the inservice training agenda, inservice materials, and a sign-in sheet of all attendees, by name and title, shall be submitted to the Division no later than April 13, 2001.